

APR 30 2007

App. Serial No. 10/789,792
Atty. Docket No. R029 1370**REMARKS**

Claims 41, 42, 44-47, 58-67, 72 and 74-77 are pending. Claims 1-40, 43, 48-57, 68-71, 73 and 78-81 are canceled. Applicants respectfully request reconsideration and withdrawal of the outstanding rejections and allowance of the application as amended.

Rejections Under 35 U.S.C. § 112, Second Paragraph

Claims 64-67, 72 and 74 stand rejected under 35 U.S.C. § 112, second paragraph as being indefinite. Applicants respectfully traverse.

By this amendment, the recitations of "bottom tear line" in claims 64, 65 and 66 are amended to read "bottom fold line," which have antecedent basis in the claims. Applicants accordingly request reconsideration and withdrawal of the rejections under 35 U.S.C. § 112, second paragraph.

Rejections Under 35 U.S.C. § 102(e) and § 103(a)

Claims 41-47, 58-60, 62 and 63 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Pub. No. 2004/0188277 to *Auclair*. Claims 64-67, 72 and 74-77 stand rejected as being anticipated by *Auclair* or, in the alternative, under 35 U.S.C. § 103(a) as obvious in light of *Auclair* in view of either U.S. 6,977,316 to *Sutherland* or U.S. 6,484,903 to *Spivey et al.* Claim 61 stands rejected as being unpatentable over *Auclair* in view of U.S. 6,283,293 to *Lingamfelter*. Applicants respectfully traverse.

As amended, claim 41 recites:

...a substantially straight bottom tear line that extends at least partially across the first end and spaced from the bottom panel;

a first side tear line defining a first end retainer in the first end and extending diagonally in a straight section through the first side panel adjacent to the top panel;

a second side tear line defining a second end retainer in the first end and extending diagonally in a straight section through the second side panel adjacent to the top panel....

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Amended claim 42 recites:

...a substantially straight bottom tear line that extends at least partially across the first end and spaced from the bottom panel;
a first side tear line defining a first end retainer in the first end and extending diagonally in a straight section through the first side panel adjacent to the top panel;
a second side tear line defining a second end retainer in the first end and extending diagonally in a straight section through the second side panel adjacent to the top panel...
the second side tear line includes a second curved portion that in part defines the second end retainer.

Amended claim 75 recites:

...a substantially straight bottom tear line that extends at least partially across the first end generally parallel to the bottom panel, wherein the bottom tear line is spaced from and adjacent to an upper edge of the bottom end flap;
a first side tear line defining a first end retainer in the first end and extending through the first side panel in a straight section adjacent to the top panel;
a second side tear line defining a second end retainer in the first end and extending through the second side panel in a straight section adjacent to the top panel....

Amended claim 76 recites:

...a substantially straight bottom tear line that extends at least partially across the first end generally parallel to the bottom panel, wherein the bottom tear line is spaced from and adjacent to an upper edge of the bottom end flap;
a first side tear line defining a first end retainer in the first end and extending through the first side panel in a straight section adjacent to the top panel;
a second side tear line defining a second end retainer in the first end and extending through the second side panel in a straight section adjacent to the top panel....

Referring to Figures 2 and 3 of *Auclair*, the tear lines 81, 83, 85 defining the corner portion T of the carton are curved. *Auclair's* tear lines 81, 83, 85 are presumably curved to provide access to containers within the carton.

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By contrast, referring to the exemplary embodiment shown in Figures 1 and 2 of the present application, the bottom tear lines 68 and the tear lines 62 extending through the side panels 14, 22 are comprised of straight sections. Claims 41, 42, 75 and 76 recite a "substantially straight bottom tear line" and therefore define over *Auclair*.

Claims 41 and 42 also recite a first side tear line that extends "diagonally in a straight section through the first side panel" and a second side tear line that extends "diagonally in a straight section through the second side panel." *Auclair* fails to disclose such diagonal tear lines.

Claims 75 and 76 recite a first side tear line that extends through a "first side panel in a straight section adjacent to the top panel" and a second side tear line that extends through a "second side panel in a straight section adjacent to the top panel." *Auclair* fails to disclose such diagonal tear lines.

Amended claim 64 recites:

- ...a substantially straight bottom fold line that extends at least partially across the first end generally parallel to the bottom panel;
- a first side tear line defining a first end retainer in the first end and extending through the first side panel diagonally in a straight section adjacent to the top panel;
- a second side tear line defining a second end retainer in the first end and extending through the second side panel diagonally in a straight section adjacent to the top panel....

Amended claim 65 recites:

- ...a substantially straight bottom fold line that extends at least partially across the first end generally parallel to the bottom panel;
- a first side tear line defining a first end retainer in the first end and extending diagonally in a straight section through the first side panel adjacent to the top panel;
- a second side tear line defining a second end retainer in the first end and extending diagonally in a straight section through the second side panel adjacent to the top panel....

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Claims 64 and 65 recite a "substantially straight bottom fold line" and therefore define over *Auclair*.

Claims 64 and 65 also recite a first side tear line extending "diagonally in a straight section" through a first side panel and a second side tear line extending "diagonally in a straight section" through a second side panel. *Auclair* fails to disclose such diagonal tear lines.

In light of the above remarks, Applicants assert that *Auclair* fails to anticipate any of amended claims 41, 42, 64, 65, 75 and 76. Applicants therefore respectfully request reconsideration and withdrawal of the rejections under 35 U.S.C. § 102(e).

Lingamfelter, *Sutherland* and *Spivey* each disclose straight tear lines defining dispensing flaps. There is no suggestion in the prior art, however, that such tear lines should be incorporated into the carton disclosed by *Auclair*. Applicants accordingly respectfully request reconsideration and withdrawal of the rejections under 35 U.S.C. § 103(a).

CONCLUSION

In view of the above remarks, Applicants respectfully assert that the rejections of the claims as set forth in the Final Office Action have been addressed and overcome. Applicants further respectfully assert that all claims are in condition for allowance and request that an early notice of allowance be issued.

If issues may be resolved through Examiner's Amendment, or clarified in any manner, please call the undersigned attorney at (404) 879-2443.

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The Commissioner is hereby authorized to charge any fees that may be required for the timely consideration of this Response under 37 C.F.R. §§ 1.16 and 1.17, or credit any overpayment to Deposit Account No. 09-0528.

Respectfully submitted,

4-30-07
Date

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